

EXHIBIT 37

1 KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
2 BRIAN L. FERRALL - # 160847
DAVID SILBERT - # 173128
3 MICHAEL S. KWUN - #198945
633 Battery Street
4 San Francisco, CA 94111-1809
Telephone: (415) 391-5400
5 Email: rvannest@kvn.com;
bferrall@kvn.com; dsilbert@kvn.com;
6 mkwun@kvn.com

SUSAN CREIGHTON, SBN 135528
SCOTT A. SHER, SBN 190053
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1700 K Street NW, Fifth Floor
Washington, D.C., 20006-3817
Telephone: (202) 973-8800
Email: screighton@wsgr.com;
ssher@wsgr.com

7
8 JONATHAN M. JACOBSON, NY SBN 1350495
CHUL PAK (*pro hac vice*)
DAVID H. REICHENBERG (*pro hac vice*)
9 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
10 1301 Avenue Of The Americas, 40th Floor
New York, NY 10019-6022
11 Telephone: (212) 999-5800
Email: jjacobson@wsgr.com; cpak@wsgr.com;
12 dreichenberg@wsgr.com

13 Attorneys for Defendant ARISTA NETWORKS, INC.

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 CISCO SYSTEMS, INC.,

19 Plaintiff,

20 v.

21 ARISTA NETWORKS, INC.,

22 Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF JOHN R. BLACK,
JR. IN SUPPORT OF ARISTA
NETWORKS, INC.'S OPPOSITION TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT, AND ARISTA NETWORKS,
INC.'S MOTION FOR SUMMARY
JUDGMENT (DKT. NO. 329)**

23 Date: August 4, 2016
24 Time: 9:00 a.m.
25 Dept.: Courtroom 3 - 5th Floor
Judge: Hon. Beth Labson Freeman

26 Date Filed: December 5, 2014

27 Trial Date: November 21, 2016

28
DECLARATION OF JOHN R. BLACK, JR. IN SUPPORT OF ARISTA NETWORKS, INC.'S
OPPOSITION TO CISCO'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AND ARISTA
NETWORKS, INC.'S MOTION FOR SUMMARY JUDGMENT (DKT. NO. 329)
Case No. 5:14-cv-05344-BLF (NC)

1 I, John R. Black Jr., declare as follows:

2 1. I am Associate Professor of Computer Science at the University of Colorado,
3 Boulder. I hold a Bachelor of Science from the California State University at Hayward (now
4 “California State University, East Bay”) in Mathematics and Computer Science, conferred in
5 1988. I received a Doctor of Philosophy in Computer Science from the University of California
6 at Davis in 2000.

7 2. Unless otherwise stated, the facts I set forth in this declaration are based on my
8 personal knowledge and expertise, or knowledge I obtained through my review of evidence
9 (including documents and deposition testimony) produced in this litigation and provided to me for
10 consideration, publicly available materials, or other investigation for purposes of my providing an
11 expert opinion in this matter.

12 3. I submit this declaration in support of Arista’s Opposition to Cisco’s Motion for
13 Summary Judgment. If called to testify as a witness, I could and would testify competently to
14 such facts, and my expert opinions set forth in the exhibits to this declaration, under oath.

15 4. I have been retained to provide my expert opinions on issues related to Cisco’s
16 allegations of copyright infringement in this litigation, including matters relating to the
17 copyrightability of the asserted aspects of the asserted works, and matters relating to Arista’s
18 defenses to Cisco’s infringement allegations, including but not limited to *scenes a faire*, fair use,
19 copyright misuse, and words and short phrases. I also provided opinions in response to the
20 Opening Expert Report of Dr. Kevin Almeroth, dated June 3, 2016.

21 5. Attached hereto as Exhibit 1 is a true and correct copy of the opening expert report
22 (“Black Opening Report”) I prepared in this action, which I signed on June 3, 2016 and is a true
23 and correct expression of my opinions based on the facts I currently know. The Black Opening
24 Report also provides a more detailed description of my qualifications and experience, and the
25 materials I considered in formulating my opinions. (I understand that the Black Opening Report
26 was submitted as evidence in support of Arista’s Motion for Summary Judgment (Dkt. No. 329)

1 By this declaration, I also confirm the accuracy of the Black Opening Report for purposes of that
2 motion as well.).

3 6. Attached hereto as Exhibit 2 is a true and correct copy of Appendix A to the Black
4 Opening Report.

5 7. Attached hereto as Exhibit 3 is a true and correct copy of Appendix B to the Black
6 Opening Report.

7 8. Attached hereto as Exhibit 4 is a true and correct copy of Appendix C to the Black
8 Opening Report.

9 9. Attached hereto as Exhibit 5 is a true and correct copy of Appendix D to the Black
10 Opening Report.

11 10. Attached hereto as Exhibit 6 is a true and correct copy of Appendix E to the Black
12 Opening Report.

13 11. Attached hereto as Exhibit 7 is a true and correct copy of Appendix F to the Black
14 Opening Report.

15 12. Attached hereto as Exhibit 8 is a true and correct copy of Appendix G to the Black
16 Opening Report.

17 13. Attached hereto as Exhibit 9 is a true and correct copy of Appendix H.AD to the
18 Black Opening Report.

19 14. Attached hereto as Exhibit 10 is a true and correct copy of Appendix H.ALU to the
20 Black Opening Report.

21 15. Attached hereto as Exhibit 11 is a true and correct copy of Appendix H.AT to the
22 Black Opening Report.

23 16. Attached hereto as Exhibit 12 is a true and correct copy of Appendix H.AV to the
24 Black Opening Report.

25 17. Attached hereto as Exhibit 13 is a true and correct copy of Appendix H.BR to the
26 Black Opening Report.

1 18. Attached hereto as Exhibit 14 is a true and correct copy of Appendix H.DE to the
2 Black Opening Report.

3 19. Attached hereto as Exhibit 15 is a true and correct copy of Appendix H.DL to the
4 Black Opening Report.

5 20. Attached hereto as Exhibit 16 is a true and correct copy of Appendix H.EC to the
6 Black Opening Report.

7 21. Attached hereto as Exhibit 17 is a true and correct copy of Appendix H.ER to the
8 Black Opening Report.

9 22. Attached hereto as Exhibit 18 is a true and correct copy of Appendix H.EX to the
10 Black Opening Report.

11 23. Attached hereto as Exhibit 19 is a true and correct copy of Appendix H.F to the
12 Black Opening Report.

13 24. Attached hereto as Exhibit 20 is a true and correct copy of Appendix H.HP to the
14 Black Opening Report.

15 25. Attached hereto as Exhibit 21 is a true and correct copy of Appendix H.ISCLI to
16 the Black Opening Report.

17 26. Attached hereto as Exhibit 22 is a true and correct copy of Appendix H.JE to the
18 Black Opening Report.

19 27. Attached hereto as Exhibit 23 is a true and correct copy of Appendix H.NG to the
20 Black Opening Report.

21 28. Attached hereto as Exhibit 24 is a true and correct copy of Appendix H.NX to the
22 Black Opening Report.

23 29. Attached hereto as Exhibit 25 is a true and correct copy of Appendix H.PR to the
24 Black Opening Report.

25 30. Attached hereto as Exhibit 26 is a true and correct copy of Appendix H.RB to the
26 Black Opening Report.

1 31. Attached hereto as Exhibit 27 is a true and correct copy of Appendix H.SU to the
2 Black Opening Report.

3 32. Attached hereto as Exhibit 28 is a true and correct copy of Appendix I to the Black
4 Opening Report.

5 33. Attached hereto as Exhibit 29 is a true and correct copy of Appendix J.1 to the
6 Black Opening Report.

7 34. Attached hereto as Exhibit 30 is a true and correct copy of Appendix J.2 to the
8 Black Opening Report.

9 35. Attached hereto as Exhibit 31 is a true and correct copy of Appendix J.3 to the
10 Black Opening Report.

11 36. Attached hereto as Exhibit 32 is a true and correct copy of Appendix K to the
12 Black Opening Report.

13 37. Attached hereto as Exhibit 33 is a true and correct copy of Exhibit 1 to the Black
14 Opening Report.

15 38. Attached hereto as Exhibit 34 is a true and correct copy of Exhibit 2 to the Black
16 Opening Report.

17 39. Attached hereto as Exhibit 35 is a true and correct copy of Exhibit 3 to the Black
18 Opening Report.

19 40. Attached hereto as Exhibit 36 is a true and correct copy of Exhibit 4 to the Black
20 Opening Report.

21 41. Attached hereto as Exhibit 37 is a true and correct copy of Exhibit 5 to the Black
22 Opening Report.

23 42. Attached hereto as Exhibit 38 is a true and correct copy of my Rebuttal Expert
24 Report (“Black Rebuttal Report”), filed on June 17, 2016. The Black Rebuttal Report is also a
25 true and correct expression of my opinions based on the facts I currently know, and discloses the
26 materials I considered in formulating those opinions.

43. Attached hereto as Exhibit 39 is a true and correct copy of Amended Appendix C to the Black Rebuttal Report.

44. Attached hereto as Exhibit 40 is a true and correct copy of Amended Appendix D to the Black Rebuttal Report.

45. Attached hereto as Exhibit 41 is a true and correct copy of Amended Appendix G to the Black Rebuttal Report.

46. Attached hereto as Exhibit 42 is a true and correct copy of Amended Appendix H.AD to the Black Rebuttal Report.

47. Attached hereto as Exhibit 43 is a true and correct copy of Amended Appendix H.ALU to the Black Rebuttal Report.

48. Attached hereto as Exhibit 44 is a true and correct copy of Amended Appendix H.AT to the Black Rebuttal Report.

49. Attached hereto as Exhibit 45 is a true and correct copy of Amended Appendix H.AV to the Black Rebuttal Report.

50. Attached hereto as Exhibit 46 is a true and correct copy of Amended Appendix H.BR to the Black Rebuttal Report.

51. Attached hereto as Exhibit 47 is a true and correct copy of Amended Appendix H.DE to the Black Rebuttal Report.

52. Attached hereto as Exhibit 48 is a true and correct copy of Amended Appendix H.DL to the Black Rebuttal Report.

53. Attached hereto as Exhibit 49 is a true and correct copy of Amended Appendix H.EC to the Black Rebuttal Report.

54. Attached hereto as Exhibit 50 is a true and correct copy of Amended Appendix H.ER to the Black Rebuttal Report.

55. Attached hereto as Exhibit 51 is a true and correct copy of Amended Appendix H.EX to the Black Rebuttal Report.

1 56. Attached hereto as Exhibit 52 is a true and correct copy of Amended Appendix
2 H.F to the Black Rebuttal Report.

3 57. Attached hereto as Exhibit 53 is a true and correct copy of Amended Appendix
4 H.HP to the Black Rebuttal Report.

5 58. Attached hereto as Exhibit 54 is a true and correct copy of Amended Appendix
6 H.ISCLI to the Black Rebuttal Report.

7 59. Attached hereto as Exhibit 55 is a true and correct copy of Amended Appendix
8 H.JE to the Black Rebuttal Report.

9 60. Attached hereto as Exhibit 56 is a true and correct copy of Amended Appendix
10 H.NG to the Black Rebuttal Report.

11 61. Attached hereto as Exhibit 57 is a true and correct copy of Amended Appendix
12 H.PR to the Black Rebuttal Report.

13 62. Attached hereto as Exhibit 58 is a true and correct copy of Amended Appendix
14 H.RB to the Black Rebuttal Report.

15 63. Attached hereto as Exhibit 59 is a true and correct copy of Amended Appendix
16 H.SU to the Black Rebuttal Report.

17 64. Attached hereto as Exhibit 60 is a true and correct copy of Amended Appendix J.3
18 to the Black Rebuttal Report.

19 65. Attached hereto as Exhibit 61 is a true and correct copy of Amended Appendix K
20 to the Black Rebuttal Report.

21 66. Attached hereto as Exhibit 62 is a true and correct copy of Appendix L.1 to the
22 Black Rebuttal Report.

23 67. Attached hereto as Exhibit 63 is a true and correct copy of Appendix L.2 to the
24 Black Rebuttal Report.

25 68. Attached hereto as Exhibit 64 is a true and correct copy of Appendix M to the
26 Black Rebuttal Report.

27
28

69. Attached hereto as Exhibit 65 is a true and correct copy of Appendix N to the Black Rebuttal Report.

70. Attached hereto as Exhibit 66 is a true and correct copy of Exhibit 6 to the Black Rebuttal Report.

71. As part of my analysis of the CLI commands supported by the various Cisco CLIs at issue in this lawsuit, including my analysis of the many Cisco user manuals cited in my Black Opening Report, I determined that there were well over 79,000 issuable Cisco CLI “show” commands (*i.e.*, valid commands that begin with the word “show”) described in Cisco’s user documentation. Each of these issuable “show” commands has an associated command response/output. Cisco and Dr. Almeroth, however, have accused Arista of copying only thirty-six command responses in this lawsuit. *See, e.g.*, Almeroth Opening Report, dated June 3, 2016, at Exhibit Copying-3.

72. As part of my analysis of the CLI commands supported by the Arista EOS CLI, I determined that there were well over 4,000 distinct “show” commands supported by Arista EOS. Each of these “show” commands has an associated command response/output that. Cisco and Dr. Almeroth, however, have accused Arista of copying only thirty-six command responses in this lawsuit. *See, e.g.*, Almeroth Opening Report, dated June 3, 2016, at Exhibit Copying-3.

73. I understand Cisco has alleged help description copying in this lawsuit, and that such allegations were first made by Cisco on the last day of fact discovery, one week before my Black Opening Report was due. I did not have sufficient time to consider the meaning and weight of these allegations, or the merits of the evidence that Cisco and Dr. Almeroth cited. Given the late disclosure by Cisco of these allegations, I also understand that no depositions were taken of any Cisco witnesses regarding the asserted help descriptions and how they were created, and no written discovery was taken regarding who created the help descriptions, when they were created, and how they were created.

Executed July 14, 2016, at Granby, Colorado.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



JOHN R. BLACK, JR.